

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**OCT 18 2005**

LYN ANDRADE,

Plaintiff - Appellant,

v.

JAMES G. ROCHE, Secretary Department  
of the Air Force,

Defendant - Appellee.

No. 03-56961

D.C. No. CV-02-03789-RGK

MEMORANDUM\*

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Argued and Submitted September 14, 2005  
Pasadena, California

Before: GRABER and W. FLETCHER, Circuit Judges, and FOGEL,\*\* District  
Judge.

Plaintiff Lyn Andrade appeals from a summary judgment in favor of  
Defendant on her claims of sex discrimination and retaliation under Title VII. We  
review de novo. Buono v. Norton, 371 F.3d 543, 545 (9th Cir. 2004). Keeping in

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\* This disposition is not appropriate for publication and may not be cited to  
or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Jeremy D. Fogel, United States District Judge for the  
Northern District of California, sitting by designation.

mind that on summary judgment the necessary proof "does not even need to rise to the level of a preponderance of the evidence," Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1062 (9th Cir. 2002) (internal quotation marks omitted), we affirm in part and reverse and remand in part.

1. Although Plaintiff scored one point higher, on Defendant's selection matrix, than the male applicant who was hired instead in 1997, that fact alone does not create an issue of fact because some males who scored higher similarly were not selected. There is no other admissible evidence that would suggest that Plaintiff's rejection occurred "under circumstances which give rise to an inference of unlawful discrimination" because of sex. Tex. Dep't of Comty. Affairs v. Burdine, 450 U.S. 248, 253 (1981).

2. Plaintiff filed an informal EEO complaint in 1995 accusing Patricia Ryun and her superiors of engaging in sex discrimination. Ryun is the one who selected Sweet instead of Plaintiff some 18 months later. There is evidence in the summary judgment record permitting an inference of causation, Villiarimo, 281 F.3d at 1064-65. Ryun admitted that she knew of the complaint. Schorey testified that he heard Ryun and two other supervisors say that Plaintiff "would never get hired back in the organization because she was a troublemaker," even though he thought that she was one of the best people in the organization.

AFFIRMED in part; REVERSED and REMANDED in part. The parties shall bear their own costs on appeal.